IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.946 OF 2001

Sou.Bayabai Karbhari Dhemase)
Age 55 years, Occ. Agri. & Household)
Chandori, Tal.Niphad, Dist. Nasik.).. Appellant
(Org.Plaintiff)

Versus

1) Smt.Gangubai Sudam Aware)
Age Adult, Occ.: Household)

2) Vijay Sudam Aware)
Age 37 years, Occ.: Agri.)

3) Rajendra Sudam Aware)
Age 35 years, Occ.: Agri.)

4) Shamrao Sudam Aware)
Age Adult, Occ. Agri. & Service.)

5) Ramrao Sudam Aware)
Age 32 years, Occ.: Agri.)

6) Laxman Sudam Aware)
Age 30 years, Occ.: Agri.)

7) Madhukar Sudam Aware)
Age 23 years, Occ.: Agri.)

8) Mrs.Jayashree Prakash Chavan)
Age 21 years, Occ.: Agri.)

(Respondent Nos.1 to 8 being heirs of)
late Sudam Bhau Aware) all r/o Kherwadi)
(Narayangaon), Tal. Niphad, Dist. Nasik.).. Respondents
(Org.Defendants)

Mr.Uday Warunjikar for the Appellant.

Mr.P.S.Dani for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

JUDGMENT RESERVED ON : 20TH OCTOBER 2004

JUDGMENT PRONOUNCED ON : 1ST DECEMBER 2004

JUDGMENT :

. This Appeal From Order arises from the rejection of the application for temporary injunction by the Civil Judge, Senior Division, Niphad vide order dated 5th September 2001.

2. The suit land originally belonged to one Sudam Bhau Aware who expired on 10th September 1998 leaving behind Defendant Nos.1 to 8 i.e. the Respondents herein, as his heirs and legal representatives. Defendant Nos.2 to 8 have relinquished their rights in favour of Defendant No.1. It appears that the deceased Sudam Aware had agreed to sell the property to the Plaintiff for a total consideration of Rs.6,66,000/- on 5th April 1997. Earnest money was paid to Sudam who executed a supplementary writing and admitted receipt of a further amount. According to the Plaintiff, she has paid the entire amount except for a sum of Rs.2,58,000/- which she is ready and willing to pay in order to have the sale-deed executed. It appears that the sale-deed was not executed as the permission which is required under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "said Act") for sale of tenanted land was not obtained from the Collector. However, on the same day the agreement of sale was executed, possession receipt was also

executed by the Defendants' predecessor-in-title in favour of the Plaintiff. The Plaintiff, therefore, claims to be in possession of the suit lands and according to her she has been cultivating the suit lands ever since she was put in possession of the same. The Plaintiff had produced a letter issued by the Niphad Sugar Factory on 27th December 1999 stating that the Plaintiff had brought the sugarcane crop to the factory. She had also relied on the affidavits of various neighbouring land holders to indicate that she was in possession of the suit lands.

3. The Defendants opposed the application by contending that the agreement of sale could not be acted upon since the Plaintiff was not ready and willing to perform her part of the contract. The Defendants also contended that the entries in the 7/12 extract indicated that Defendant No.1 is in possession of the suit lands. She also contended that by notice dated 23rd September 1999 she had terminated the agreement for sale and had forfeited the earnest money. Defendant No.1 contended that since no steps had been taken by the Plaintiff for over five months from the termination of the agreement, the Plaintiff was not entitled to any interim injunction.

4. The trial Court has found that the Plaintiff was

unable to make out a prima facie case for grant of temporary injunction. The trial Court has observed that under Section 43 of the said Act, no property could be transferred either by sale, gift, mortgage, lease or assignment without previous sanction of the Collector. According to the trial Court, since there was no sanction given by the Collector to the agreement of sale between the Plaintiff and the Defendants, the sale itself was prima facie invalid. Apart from this, the trial Court has held that although the Plaintiff had claimed that she was in possession of the suit lands for three years prior to the date of filing of the Suit, after the agreement of sale dated 5th April 1997 was executed, the 7/12 extract was not changed to that effect. The trial Court has found that the Plaintiff attempted to show possession of the suit lands on the basis of the registration of sugarcane with the Niphad Sugar Factory by relying on a certificate issued by the said Sugar Factory for the years 1998-99 and 1999-2000 in respect of Gat No.994. The trial Court has observed that the Plaintiff was not able to prove readiness and willingness to execute the sale-deed and, therefore, was not entitled to any relief.

5. After hearing the learned Advocates for either side, I am of the view that the trial Court has not applied its mind to the certificate issued by the

authorities under Section 43 of the said Act dated 5th July 1999 according permission to sell the land to the Plaintiff on certain terms and conditions. The main thrust of the impugned order appears to be that there was no sanction granted to sell the land under Section 43 of the said Act. It appears that the trial Court has not considered this factor while passing the impugned order. Furthermore, Naib-Tahsildar, Niphad has found that the Appellant is in possession of the suit lands by order dated 5th September 2001 which is annexed to the compilation of the Appeal Memo. It appears that this order was not produced before the trial Court since the certified copy of the same was obtained only on 3rd October 2001 i.e. after the impugned order was passed. The trial Court has not considered the affidavits of the neighbouring land holders which had been produced before it. The trial Court has not referred to these affidavits at all and, therefore, it is impossible to decipher as to whether these affidavits have been discarded and not relied upon by the trial Court. The trial Court after observing that there is a ban on the sale or transfer of properties under Section 43 of the said Act, has not considered the fact that the proceedings of 5th July 1999 indicate that the sanction for the sale had been accorded, provided certain terms and conditions were fulfilled. There is no discussion as to whether these terms and conditions had been

fulfilled.

6. In my view, therefore, it would be appropriate to remand the matter to the trial Court to consider the application at Exhibit 5 afresh. The trial Court while doing so, will take into account the affidavits of the neighbouring land holders and the permission obtained under Section 43 of the Act from the authorities on 5th July 1999. The trial Court will also consider the effect of the decision of the Naib-Tahsildar, Niphad dated 5th September 2001 while considering whether the Appellant is in possession of the suit lands.

7. Appeal From Order allowed. Matter remanded back to the trial Court to decide application Exhibit 5 filed by the Appellant in Special Civil Suit No.16 of 2000 afresh. No order as to costs.

8. Status quo as of today to be maintained till the trial Court decides the issue.

9. Writ to go forthwith.

10. Certified copy expedited.